

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADVANCEME, INC.,

Plaintiff,

vs.

AMERIMERCHANT, LLC, and FIRST FUNDS
LLC,

Defendants.

CASE NO. 6:06-CV-82

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff AdvanceMe, Inc. ("AdvanceMe") files this amended complaint against defendants AmeriMerchant LLC and First Funds LLC. Pursuant to the Order entered by the Court on July 2, 2007, AdvanceMe hereby amends its original complaint to include defendant First Funds LLC and to seek monetary damages as against First Funds LLC. A true and correct copy of this Order is attached hereto as Exhibit A.

THE PARTIES

1. Plaintiff AdvanceMe, Inc. ("AdvanceMe") is a corporation organized under the laws of Delaware having its principal place of business at 600 TownPark Lane, Kennesaw, Georgia 30144.

2. Upon information and belief, at all relevant times mentioned below, Defendant AmeriMerchant, LLC ("AmeriMerchant") has been and is a limited liability company organized under the laws of the state of New York having two principal places of business located at: 475

Park Avenue South, 15th Floor, New York, New York 10016 and 450 Geary Street, Suite 300, San Francisco, California 94102.

3. Upon information and belief, at all relevant times mentioned below, Defendant First Funds LLC (“First Funds”) has been a limited liability company organized under the laws of the state of New York having its principal place of business at 240 West 35th Street, 16th Floor, New York, New York 10001.

4. Defendants AmeriMerchant and First Funds are referred to collectively as “Defendants” in this amended complaint.

JURISDICTION AND VENUE

5. This lawsuit is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 *et seq.* The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1338(a).

6. Upon information and belief, this Court has personal jurisdiction over Defendants and venue is proper in this District under 28 U.S.C. § 1391(c) and § 1400(b) because Defendants have continuously offered for sale, and continue to offer for sale, infringing products and services in this judicial district.

THE PATENT IN SUIT

7. On September 6, 2005, the United States Patent and Trademark Office (“USPTO”) issued U.S. Patent No. 6,941,281 entitled “Automated Payment” (hereinafter “the ‘281 patent”). A true and correct copy of the ‘281 patent is attached hereto as Exhibit B.

8. AdvanceMe is the owner of the ‘281 patent by assignment with full and exclusive rights to bring suit to enforce this patent.

COUNT ONE:

INFRINGEMENT OF THE '281 PATENT AGAINST ALL DEFENDANTS

9. AdvanceMe realleges and incorporates herein the allegations of paragraphs 1 through 8 of this Complaint as if fully set forth herein.

10. Upon information and belief, in violation of 35 U.S.C. § 271, Defendants have infringed and are continuing to infringe, literally and/or under the doctrine of equivalents, the '281 patent by practicing one or more claims of the '281 patent in their use of methods and/or systems covered by the '281 patent and offering financial services that utilize methods and/or systems covered by the '281 patent.

11. Upon information and belief, in violation of 35 U.S.C. § 271, Defendants have infringed and are continuing to infringe the '281 patent by contributing to or actively inducing the infringement by others of the '281 patent.

12. Defendants' infringement of the '281 patent has caused and continues to cause damage to AdvanceMe in an amount to be determined at trial.

13. Upon information and belief, Defendants have willfully infringed the '281 patent, entitling AdvanceMe to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of attorneys' fees and costs in prosecuting this action pursuant to 35 U.S.C. § 285.

14. Upon information and belief, Defendants' acts of infringement of the '281 patent will continue after service of this complaint unless enjoined by the Court.

15. Unless Defendants are enjoined by this Court from continuing their infringement of the '281 patent, AdvanceMe will suffer additional irreparable damages and impairment of the value of its patent rights. Thus, AdvanceMe is entitled to an injunction against further infringement.

PRAYER FOR RELIEF

WHEREFORE, AdvanceMe prays for the following relief:

- (a) That judgment be entered in favor of AdvanceMe that the '281 patent is valid and infringed by Defendants;
- (b) That AdvanceMe be granted an accounting of all damages sustained as a result of Defendants' infringement;
- (c) That AdvanceMe be awarded actual damages together with prejudgment interest according to proof, and enhanced damages pursuant to 35 U.S.C. § 284;
- (d) That Defendants, their officers, agents, servants, employees, and those persons acting in active concert or in participation with them be enjoined from further infringement of the '281 patent pursuant to 35 U.S.C. § 283;
- (e) That Defendants be ordered to pay attorneys' fees pursuant to 35 U.S.C. § 285;
- (f) That Defendants be ordered to pay all costs associated with this action; and
- (g) That AdvanceMe be granted such other and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, AdvanceMe respectfully demands a trial by jury as to all issues so triable.

Dated: July 31, 2007

Respectfully submitted:

By: /s/ Otis Carroll
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ATTORNEYS FOR PLAINTIFF ADVANCEME, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by facsimile transmission and/or first class mail this 31st day of July, 2007.

/s/ _____
Otis Carroll